

meat products amounts to \$1,100 and the price decrease for poultry products amounts to \$2,900.

Accordingly, FSIS, in accordance with §§ 303.1(d)(2)(iii)(b) and 381.10(d)(2)(iii)(b) of the regulations, has automatically raised the dollar limitation or permitted sales of meat products and lowered the dollar limitation of permitted sales of poultry products to consumers other than household consumers by establishments operating as retail establishments exempt from Federal inspection requirements. Therefore, the dollar limitations for 1987 have increased from \$30,500 to \$31,600 for meat products and decreased from \$31,000 to \$28,100 for poultry products.

Done at Washington, DC on April 22, 1988.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 88-9617 Filed 4-29-88; 8:45 am]

BILLING CODE 3410-DM-M

## COMMISSION ON CIVIL RIGHTS

### Nevada Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Nevada Advisory Committee to the Commission will convene at 8:30 a.m. and adjourn at 11:30 a.m., on May 20, 1988, at the University of Nevada, Las Vegas, Wright Hall, Gold Room #112, 4505 Maryland Parkway, Las Vegas, Nevada 89154. The purpose of the meeting is to discuss findings and conclusions of the Committee's casino employment study.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Elizabeth C. Nozero or Philip Montez, Director of the Western Regional Division (213) 894-3437, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 22, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88-9608 Filed 4-29-88; 8:45 am]

BILLING CODE 6335-01-M

### Oklahoma Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Oklahoma Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:00 p.m., on May 26, 1988, at the Lincoln Plaza Hotel Conference Center, Seminole Room, 4445 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105. The purpose of the meeting is to plan program activities and to receive an orientation on the Commission, Advisory Committee operations, and regional programs.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Charles Fagin or Philip Montez, Director of the Western Regional Division (213) 894-3437, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 22, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88-9609 Filed 4-29-88; 8:45 am]

BILLING CODE 6335-01-M

## DEPARTMENT OF COMMERCE

### Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census  
Title: Construction Progress Reporting (State and Local Government)  
Form Number: Agency—C-777 (SL); OMB-NA

Type of Request: New collection  
Burden: 3,400 respondents; 3,400 reporting hours

Needs and Uses: Census collects monthly data on the value of new construction work owned by State and local government, and fiscal year expenditure data on this same construction. These estimates should be comparable on a fiscal year basis, but have differed significantly during the past decade. The difference is

growing. A possible source of the difference is the undercoverage of the desired universe used in the monthly survey. This proposed survey will be used to evaluate this undercoverage and to improve the survey by correcting the value of new State and local construction estimates. The Bureau of Economic Analysis uses the data from the monthly survey to develop construction components of the Gross National Product accounts. Other government agencies use the data in making policy decisions

Affected Public: State or local governments

Frequency: One time

Respondent's Obligation: Voluntary  
OMB Desk Officer: Francine Picoult, 395-7340

Agency: Bureau of the Census  
Title: 1990 Decennial Census—Special Place Prelist Operation

Form Number: Agency—D-351, D-351(GQ), D-351(HU); OMB-NA

Type of Request: New collection  
Burden: 265,000 respondents; 198,750 reporting hours

Needs and Uses: Census proposes to conduct this one-time survey 3 months before the 1990 Decennial Census. The collected information will be used to update address information for Special Places (e.g., colleges or universities, dormitories, missions, shelters, prisons, boarding and rooming houses, hospitals, hotels and motels, and nursing homes). This survey is necessary to ensure complete coverage of Special Places in the 1990 Decennial Census

Affected Public: Individuals or households, state or local governments, businesses or other for-profit institutions, Federal agencies or employees, non-profit institutions, and small businesses or organization

Frequency: One time

Respondent's Obligation: Mandatory  
OMB Desk Officer: Francine Picoult, 395-7340

Agency: Bureau of the Census  
Title: 1990 Decennial Census—Precanvass Operation

Form Number: Agency—D-102A, D-102B, and D-328; OMB-NA

Type of Request: New collection  
Burden: 20,100,000 respondents; 930,880 reporting hours

Needs and Uses: This unit-by-unit precanvass operation will be used to verify and update the commercial mailing list that will be used to conduct the 1990 Decennial Census. This precanvass is necessary to account for newly constructed housing units or housing units that do



not appear on the commercial list; to correct inaccurate unit designations; and to add any other units that are part of the ever-changing inventory of residential housing and special places

**Affected Public:** Individual or households

**Frequency:** One time

**Respondent's Obligation:** Mandatory  
**OMB Desk Officer:** Francine Picoult, 395-7340.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Francine Picoult, OMB Desk Officer, Room 3008, New Executive Office Building, Washington, DC 20503.

Dated: April 26, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-9669 Filed 4-29-88; 8:45 am]

BILLING CODE 3510-07-M

## Export Administration

[Docket No. 7102-01]

### Actions Affecting Export Privileges; Joseph P.M. d'Haens

#### Summary

Pursuant to the March 25, 1988 Decision and Order of the Administrative Law Judge, which Decision and Order is attached hereto and affirmed by me, Joseph P.M. d'Haens, with an address at Amerikalei 96, 2000 Antwerp, Belgium, is denied for a period of twenty (20) years from the date hereof all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations (15 CFR Parts 368-399).

#### Procedural Background

On March 25, 1988, the Administrative Law Judge entered his Decision and Order, which has been referred to me for final action pursuant to section 2412(c)(1) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401-2420 (1982 and Supp. III 1985)). The parties have made certain filings with me following the March 25, 1988 date, in particular, the filing of new counsel for

the Respondent requesting a remand of the matter to the Administrative Law Judge (or an extended period of consideration by this office) for the purposes of: (1) Providing documentary evidence concerning matters already considered at the previous hearing and (2) providing "additional evidence which counsel is not presently prepared to detail." I find no compelling reason to grant the requested relief. Respondent had ample opportunity to present evidence on issues raised in the hearing before the Administrative Law Judge, yet failed to do so. With respect to any additional evidence, it may well be that Respondent is entitled to a reopening of these proceedings in accordance with section 388.18 of the Regulations; however, such a request must be made in accordance with the provisions of that section.

#### Order

Having examined the record, and based on the facts of this case, I affirm the findings, conclusions and penalties made and imposed by the Administrative Law Judge in his Decision and Order of March 25, 1988, which Decision and Order is attached hereto and made a part hereof by express reference.

This constitutes final agency action in this matter.

Dated: April 25, 1988.

Paul Freedenberg,

Under Secretary for Export Administration.

#### Decision and Order

In the Matter of Joseph P.M. d'Haens, Respondent, Docket No. 7102-01.

Appearance for Respondent: Joseph P.M. d'Haens, Amerikalei 96, 2000 Antwerp, Belgium.

Appearance for Agency: Thomas C. Barbour, Esq., Attorney-Advisor, Office of the Deputy Chief Counsel for Export Administration, U.S. Department of Commerce, Room H-3329, Washington, DC 20230.

#### Preliminary Statement

On April 15, 1987, the Office of Export Enforcement (OEE), issued a charging letter to Respondent Joseph P.M. d'Haens, (hereinafter referred to as "Respondent"). The charging letter alleges that Respondent violated §§ 387.2, 387.3 and 387.5 of the Export Administration Regulations (25 CFR Parts 368-399), (the Regulations). The charging letter, dated April 15, 1987, was served on Respondent on or about May 5, 1987.

Respondent's answer to the charging letter was received in the Office of the Administrative Law Judge on May 11, 1987. Neither party has requested a

hearing in this matter. However, both parties have made written submissions over the past 10 months in support of their respective positions. This decision is rendered pursuant to § 388.14 of the Regulations, which provides for adjudication on the record without a hearing.

The April 15, 1987 charging letter alleges that Respondent committed three violations of the Regulations.

First, Respondent is alleged to have unlawfully conspired with Franz Traxler, doing business as Airfo GmbH, Munich, West Germany, and Michael Kolleczeck, doing business as Airfo International, New York, New York. The alleged purpose of the conspiracy was to obtain a U.S.-origin semiconductor manufacturing system (the GCA Mann 4800) on the representation that an academic institution in Belgium was the intended ultimate destination. The conspirators are alleged to have intended to, and did in fact, cause the system to be shipped to Hungary without the required reexport authorization, in violation of section 387.3 of the Regulations.

Second, Respondent allegedly violated § 387.5 of the Regulations by representing to GCA, the domestic manufacturer of the equipment, and indirectly to the Office of Export Administration (OEA), that he was purchasing the GCA Mann 4800 System on behalf of Stedelijke Industriële Hogeschool Antwerpen (I.H.A.M.), including his obtaining a Belgium Import Certificate reflecting I.H.A.M. as the ultimate consignee, when he knew that the representation was materially false and misleading, in violation of § 387.5 of the Regulations.

Third, Respondent is alleged to have caused, aided and abetted a violation of the Regulations by participating in the conspiracy with Traxler and Kolleczeck to effect the reexport of the GCA Mann 4800 System from Switzerland to Hungary without the required reexport authorization, in violation of § 387.2 of the Regulations.

#### Respondents Contentions

Respondent argues that he did not violate the Regulations, and that he did not illegally conspire with others with respect to the acquisition and disposition of the equipment. He claims that his representations in obtaining the export license and Belgium export certificate were not false and that he did not participate in a conspiracy with others to reexport the semiconductor manufacturing system from Switzerland to Hungary without the required reexport authorization.



## The Participants

1. Joseph P. M. d'Haens is a Belgian citizen and a parttime instructor at Stedelijk Instituut voor Hogere Technische Studien (SIHTS) Municipal Institute for Higher Technological Studies. This is the evening division of the Stedelijke Industriële Hogeschool Antwerpen (Municipal College for Technology of Antwerp). The acronym I.H.A.M. is used to describe either or both the College and the Institute in Antwerp, Belgium.

2. Airfo International, Inc. is a freight forwarding company with offices at 161 15 Rockaway Blvd., Jamaica, New York and 200 Park Avenue, Suite 4401, New York, New York.

3. Michael A. Kolleczeck was the manager of Airfo International, Inc. and was associated with ASL International Freight Forwarding Corp., J.F.K. International Airport, in Jamaica, New York.

4. Airfo GmbH was a West German Company engaged in the freight forwarding business, with offices at Flughafen Riem, Munich, West Germany. It was associated with Airfo International, Inc.

5. Franz Traxler was an employee of Airfo GmbH in Munich, West Germany.

6. GCA Corporation was an American corporation engaged in the business of manufacturing and selling semiconductor manufacturing equipment. Its Burlington Division was located at 209 Burlington Road, Bedford, Massachusetts.

7. GCA International was a corporation and affiliate of GCA Corporation, marketing GCA products in foreign countries. Its Swiss offices were located in Kreuzlingen, Switzerland.

8. Emri J. Diosy was the Manager-Contracts at GCA Corporation, Burlington Division.

9. Ed Baumann was an employee of GCA International in Kreuzlingen, Switzerland.

## Facts

The essential facts recited hereafter are not materially contravened. On February 9, 1982, utilizing stationery with the letterhead "Stedelijke Industriële Hogeschool Antwerpen" (I.H.A.M.), Respondent placed an order with GCA/Burlington Division in Bedford, Massachusetts for a GCA Mann 4800 DSW Step on Wafer system, including various parts and accessories. This order was a follow up to respondent's earlier discussions concerning the purchase of a GCA Mann 4800 with the Swiss subsidiary of the American manufacturer. The GCA Mann 4800 is a semiconductor manufacturing

equipment system which is on the controlled commodity list because of the high technology it utilizes. On or about February 17, 1982, GCA/Burlington Division filed an export license application with OEA seeking authorization to export a GCA Mann 4800 DSW Direct Step on Wafer System, including parts and accessories, to I.H.A.M. The applicant sought exemption from the requirement that an import certificate be filed on the grounds that the ultimate consignee was an institute of higher learning.

Shipment of the system from Boston was arranged through Airfo International, a freight forwarding firm in New York, New York, and its West German parent, Airfo GmbH. While shipping arrangements were being made, OEA advised GCA/Burlington on March 12, 1982, that I.H.A.M. was not considered an institute of higher learning and, thus, an import certificate was required from the ultimate consignee. On March 17, 1982, the Swiss subsidiary of GCA forwarded to its U.S. parent a cable it received from the Respondent explaining I.H.A.M.'s academic program. In addition, in that telex, Respondent also stressed the need for delivery before the end of March because of the budgetary cycle of the academic institution.

By letter dated March 19, 1982, after receiving a facsimile copy of an Import Certificate from Belgium identifying "Joseph d'Heans/I.H.A.M., Paardenmarkt 94, 2000 Antwerpen" as the intended importer of a GCA Mann 4800 DSW System, GCA/Burlington resubmitted its export license application to OEA. Following receipt of the Belgian Import Certificate, export license A603641 was issued, authorizing the export of a GCA Mann 4800 DSW System, with parts and accessories, to I.H.A.M.

On March 23, 1982, Michael A. Kolleczeck, of Airfo International in New York, forwarded to GCA/Burlington Division a letter which included the necessary documents for the shipment of the GCA Mann 4800 System. In accordance with the instructions contained in that letter, GCA transported the system to the Boston airport, from which it was shipped to the intermediate consignee, Pro Air AG, in Zurich, Switzerland, on March 29, 1982. The documents accompanying the shipment identified GCA/Burlington Division as the exporter, Airfo International as the agent of the exporter, Pro Air, Zurich, Switzerland as the intermediate consignee and I.H.A.M. as the ultimate consignee. Three pieces of equipment that missed the March 29 flight were shipped on March 30. The

system was never shipped from Zurich to I.H.A.M. in Belgium. It was transshipped to Hungary, an unauthorized destination.

The record reflects that on March 1, 1982, a request for a quote for insuring the shipment of the system from Boston to Zurich by air and then on to "BUD" (Budapest) by truck, was made by the Airfo office in Munich, to the Airfo office in New York. Prior to shipping the system, Airfo International had obtained insurance covering the shipment of the GCA Mann 4800 System by air from Boston to Pro Air in Zurich, and then from Zurich, via truck, to Budapest, Hungary.

## Discussion

The record establishes that Respondent ordered the GCA Mann 4800 System on I.H.A.M. stationery. The original order and subsequent representations reflect that the equipment was to go to I.H.A.M., an academic institution in Belgium. It is now clear that, contrary to the representations made, the system was never intended to be shipped to Belgium. Instead, as alleged in the charging letter, the true ultimate consignee was in Budapest, Hungary. Despite his protestations to the contrary, the evidence, including statements in Respondent's answer, establish that the Respondent was an active participant in the diversion scheme from the outset.

Conspiracy is inherently secretive by nature, and is often proved only by circumstantial evidence. "Inferential proof may be controlling where the offense charged is so inherently secretive in nature as to permit the marshalling of only circumstantial evidence." *United States v. Pelfrey*, 822 F.2d 628, 632 (6th Cir. 1987). As another Circuit Court has stated:

For it is most often true, especially in broad schemes calling for the aid of many persons, that after discovery of enough to show clearly the essence of the scheme and the identity of a number participating, the identity and the fact of participation of other remain undiscovered and undiscoverable. Secrecy and concealment are essential features of successful conspiracy. The more completely they are achieved, the more successful the crime. Hence, the law rightly gives room for allowing the conviction of those discovered upon showing sufficiently the essential nature of the plan and their connections with it, without requiring evidence of knowledge of all its details or of the participation of others.

*United States v. Donsky*, 825 F.2d 746, 753 (3rd Cir. 1987), citing *Blumenthal v. United States*, 332 U.S. 539, 556-7 (1947). It is also well settled that each conspirator does not have to know all of



the details of the conspiracy or participate in every phase of the scheme. See, e.g., *United States v. Carter*, 760 F.2d 1568 (11th Cir. 1985).

As counsel for the Office of Export Administration urges, the sum total of the evidence and the inferences to be drawn, clearly demonstrate an illegal conspiracy. For example, the March 1, 1982, telex from Airfo GmbH to Airfo International requesting a quote for insurance for a shipment of a GCA Mann 4800 System from Boston to Budapest via Zurich demonstrates that the intent to ship the system to Hungary existed at the time Respondent told the U.S. exporter that the system was being purchased for end-use by I.H.A.M. in Belgium. While Respondent has sought to distance himself from the illegal diversion which took place with respect to the GCA Mann 4800 System, upon close examination, Respondent's answer show that it was his representation and action that gave an appearance of legitimacy to this transaction. In that answer Respondent admits that he was purchasing the GCA equipment for a Mr. H. Range, the Managing Director of Racommerz AF, a Swiss company. Respondent claims that Range asked him to set up and manage a semiconductor plant in Belgium. He also asserts that Range requested him to order the equipment for immediate delivery, even though the projected plant would not be ready for some time. Respondent also attempts to distance himself somewhat from I.H.A.M., stating that since I.H.A.M. "accepted that the equipment, after installation in Belgium, would be accessible for educational purposes intimates that I.H.A.M. was the purchaser of the GCA Mann 4800 System." He also asserts that the import certificate which he obtained from the Belgian government correctly shows that he, rather than I.H.A.M., is to receive the U.S.-origin goods in Belgium. Affidavits from officials of I.H.A.M. were submitted in an effort to establish that he was authorized to utilize I.H.A.M. letterhead in ordering the equipment. Respondent's actions at the time reflect the intent to show I.H.A.M. as the purchaser and user. Now it is clear that neither he nor I.H.A.M. was the purchaser or the end user, and he well knew that. The evidence, when considered in total, shows Respondent's "defense" is a sham. He consistently sought to convince the U.S. manufacturer that I.H.A.M. was the purchaser of the GCA Mann 4800 system. His communications to GCA were on I.H.A.M. letterhead and purportedly on behalf of I.H.A.M. In his March 17, 1982 cable to GCA's Swiss

subsidiary, Respondent sought to provide a basis for why an institute such as I.H.A.M. would order a GCA Mann 4800 System. That cable clearly reflects that it was the school, and not the Respondent, which purportedly was purchasing the equipment. His recent statement (attached as document 3 to Respondent's answer) clearly establishes that I.H.A.M. was *not* purchasing the equipment ("I want to add that it occurred frequently that school stationery was used by professors for the purchase of equipment, *as far as this transactions [sic] did not have any influence whatsoever on the budget of the school* \* \* \*") (Emphasis added.)

That I.H.A.M. did not order the GCA Mann 4800 System, and could not have placed an order for that system because of its cost, is also established by the statement of Mr. Broeckhove, another official of the school. Respondent simply used the letterhead stationery he obtained from I.H.A.M. in an attempt to give an appearance of legitimacy to the purchase of the GCA Mann 4800 System. His representations of urgency respecting the annual budget cycle and present fund availability were also totally false and made with the deliberate intent to mislead, since, in fact, the institution had no money's available nor proposed for the acquisition of such manufacturing equipment.

By admitting that he was purchasing the equipment at the request of Mr. H. Range of Racommerz AG, not at the request of I.H.A.M. Respondent's own evidence shows that he caused OEA to be provided with materially false and misleading information of the intended end-user of the GCA Mann 4800 System. His false representations prevented the Export control mechanisms from determining the eligibility of the purchaser and/or end-user to acquire such equipment.

Despite his implicit admission to providing false information concerning the intended end-use of the GCA Mann 4800 System, Respondent claims that he was not involved in any conspiracy. The evidence leads to a different conclusion. A crucial aim of the conspiracy was to provide the appearance of an apparently legitimate end-user for the GCA Mann 4800 System. As shown above, Respondent went to great lengths during the time that the system was being ordered to make it appear that I.H.A.M. was its intended end-user. It was only long after the diversion took place that Respondent acknowledged that I.H.A.M. was not the true purchaser of the system. Simply put, Respondent's

misleading representations and subsequent lack of candor materially assisted his associates in the diversion of the subject equipment. That his hands-on participation in the actual diversion from Zurich is not shown, does not release him from responsibility from all acts taken in fulfillment of the conspiracy, up to and including the transshipment to Budapest, Hungary.

The intent to have the system shipped to Budapest, Hungary, not Antwerp, Belgium, was clearly evidenced by the conspirators Kolleczeck and Traxler on March 1, 1982. This date is important for, as the chronology reflects, on several occasions thereafter Respondent sought to convince both the U.S. exporter and OEA that the GCA Mann 4800 System was intended for end-use at I.H.A.M. Indeed, at no time during the ordering or shipping of the system did Respondent reveal that he was working on behalf of anyone other than I.H.A.M. Yet he had to know how the equipment was to be shipped, paid for, etc. Documents created contemporaneously with the ongoing conspiracy are entitled to much greater weight than the after-the-fact rationalizations attempted by Respondent. It was only after the scheme was uncovered that Respondent sought to distance himself from the various representations he made regarding the involvement of I.H.A.M. in this transaction. Contrary to his statements, Respondent was a knowing participant in the conspiracy.

Indeed, Respondent's answer includes several incomplete and otherwise misleading statements which cast question on his credibility. For example, one submission states that Respondent never provided any transportation instructions to Airfo's New York office. However, while Respondent may not have discussed the shipment with Airfo in New York, an exhibit shows that he discussed the shipment with Airfo's West German office.

Respondent's suggestion that he did not know what Range was advising Airfo also appears to be misleading. On March 19, 1982, Respondent provided the Belgian Import Certificate he had obtained to the Swiss subsidiary of GCA, which in turn telexed that document to its U.S. parent. On that same date, Range told Airfo that the Belgian Import Certificate had been sent to the United States. Simply put, the "coincidence" involving these two nearly simultaneous documents, containing information which was central to the overall purposes of the conspiracy, cannot be overlooked. Only one set of inferences can be drawn from the pattern of conduct. It is that



Respondent was working with Range and the others in the diversion scheme.

Respondent's final defense is that he believed the GCA Mann 4800 System was exported from the U.S. to GCA International in Switzerland and that in March 1982 Range told him the system was to be stored in Switzerland.

By letter dated June 18, 1982, reference was made to "recent telephone conversations and also to several telexes sent to your office \* \* \*". What GCA International sought there was a written commitment from the Respondent for the installation of the GCA Mann 4800 System that had been shipped in April. On November 11, 1982 and January 26, 1983, GCA International again sought a response from the Respondent to its request for installation instructions. It was not until February 18, 1983, that Respondent even agreed to meet with GCA International to discuss installation of the system. Respondent's failure to respond to these numerous requests from GCA International is in marked contrast to his "latter day" assertions that he believed the system was under the control of the manufacturer and that he was waiting for installation in Belgium. Once again, Respondent's after-the-fact attempts to provide a justification for his actions, in connection with this illegal diversion scheme, simply do not comport with the evidence.

#### Findings

1. On or about February 5, 1982, the Respondent misrepresented to GCA International that he was a Professor of Digital Electronics at Stedelijke Industriële Hogeschool, Paardenmarkt 94, 2000 Antwerpen, Belgium and that he was requesting on the said school's behalf a price quotation from GCA for a Mann 4800 DSW (Direct Step on Wafer) System.

2. On or about February 9, 1982, the Respondent signed and caused to be sent a letter, dated February 9, 1982, to GCA Corporation, Bedford, Massachusetts, on the stationery of Stedelijke Industriële Hogeschool Antwerp ("I.H.A.M."), ordering one Mann 4800 DSW (Direct Step on Wafer) System and accessory equipment for the said school at a price of U.S. \$608,100.

3. On or about February 12, 1982, the Respondent caused Emri J. Diosy, GCA Corporation to file an application for export license (No. A603641) with the OEA stating that the commodity to be exported, the Mann 4800 DSW, would be sold and shipped to Stedelijke Industriële Hogeschool, Antwerp, Belgium.

4. On or about March 1, 1982, Franz Traxler, Airfo GmbH, sent a telex dated

March 1, 1982 to Respondents co-conspirators Michael A. Kolleczeck and Airfo International, Inc., instructing them to make out the House Air Waybill ("HAWB") to Stedelijke Industriële Hogeschool, Attn: Dr. D'Haens, Antwerp, Belgium, but to make out the Master Air Waybill ("MAWB") to Pro Air AG in Zurich, Switzerland and in the same telex Traxler requested that the co-conspirators Michael A. Kolleczeck and Airfo International, Inc., obtain a quote for insuring the shipment from Boston to Zurich, then to Budapest, Hungary by truck.

5. On or about March 17, 1982, the respondent made and caused to be made and sent to Emri J. Diosy, GCA Corporation in Bedford, Massachusetts, and from Diosy to OEA, a telex, dated March 17, 1982, explaining the academic nature of Stedelijke Industriële Hogeschool and its relationship to "I.H.A.M."

6. On or about March 18, 1982, the Respondent caused the Ministry of Economic Affairs of Belgium to prepare International Import Certificate No. USA-681, and caused the certificate to be sent to Emri J. Diosy, GCA Corporation in Bedford, Massachusetts, by misrepresenting to the Belgian authorities that the Mann 4800 DSW System would be imported into Belgium and that the total value of the import was 608,100 Belgian Francs.

7. On or about March 19, 1982, Franz Traxler, Airfo GmbH, Respondent Michael A. Kolleczeck and Airfo International, Inc., caused Emri J. Diosy, GCA Corporation to resubmit the application for export license, A603641, to OEA, together with International Import Certificate No. USA-681 from the Belgian Ministry of Economic Affairs and the telex dated March 17, 1982, from the Respondent.

8. On or about March 23, 1982, the co-conspirators Michael A. Kolleczeck and Airfo International, Inc., prepared, signed and caused to be sent to Emri Diosy, GCA Corporation in Bedford, Massachusetts a letter dated March 23, 1982, together with the Shipper's Export Declaration, and other Export documents advising that he (Kolleczeck) had booked the shipment to the Mann 4800 DSW System on Swissair Flight SR 129 on March 29, 1982, from Boston to Zurich.

9. On or about March 26, 1982, the co-conspirators Michael A. Kolleczeck and Airfo International, Inc., applied for and caused an insurance company, in New York, to issue cargo insurance for the Mann 4800 DSW System covering its transportation from Boston to Pro Air A.G., Zurich, Switzerland, and from

Zurich, by truck, to Elektromodul, Abt. in Budapest, Hungary.

10. On or about March 30, 1982, the Respondent, Michael A. Kolleczeck and Airfo International, Inc., caused the OEA, to issue Export License A603641 (expiration date—April 30, 1982) to GCA/Burlington Division in Bedford, Massachusetts for the export of a Mann 4800 DSW System and other items from the United States to Stedelijke Industriële Hogeschool in Antwerp, Belgium.

11. On or about March 29 and 30, 1982, ASL International Freight Forwarding Corp., Respondent Michael A. Kolleczeck, and Airfo International, Inc., caused Swissair Airlines to transport the Mann 4800 DSW from Boston, Massachusetts to consignee Pro Air A.G., Zuerich Airport, Switzerland under Air Waybill No. 085-5976-3130.

12. On or about March 29, 1982, the Respondent, Michael A. Kolleczeck, and Airfo International, Inc., caused GCA Corporation to prepare and send an invoice with the shipment of the Mann 4800 DSW System, noting on it Import Certificate No. USA 681 and the name Stedelijke Industriële Hogeschool as the buyer.

13. On or about March 29, 1982, the Respondent, Michael A. Kolleczeck, and Airfo International, Inc., caused Emri J. Diosy, GCA Corporation to file with U.S. Customs Service in Boston, Massachusetts a Shipper's Export Declaration falsely representing that the ultimate destination of the Mann 4800 DSW System was the country of Belgium and that the ultimate consignee for the export was Stedelijke Industriële Hogeschool in Antwerp, Belgium.

14. On or about March 30, 1982, Respondent, Michael A. Kolleczeck, and Airfo International, Inc., agreed to arrange for and cause the shipment from Basel to Zurich, Switzerland of accessory equipment including an environmental chamber for use with the same GCA Mann 4800 DSW System.

15. On or about April 9, 1982, the co-conspirators, Michael A. Kolleczeck and Airfo International, Inc., sent invoice nos. 087 and 087-a to Airfo GmbH in Munich, West Germany, billing Airfo GmbH for the shipment of the Mann 4800 DSW System from Boston, Massachusetts to Pro Air A.G. in Zurich, Switzerland and for the cost of insuring the same cargo from Boston, Massachusetts to Elektromodul in Budapest, Hungary.

16. As a part and in furtherance of the conspiracy, the Respondent ordered the semiconductor manufacturing equipment from GCA Corporation, allegedly for export to and use in Antwerp, Belgium.



17. It was part of the conspiracy that the Respondent made and caused to be made false statements and representations on documents and forms which were sent and submitted by GCA Corporation from Bedford, Massachusetts to the Office of Export Administration, U.S. Department of Commerce, to influence action by OEA and to obtain a validated export license from OEA.

18. It was a further part of the conspiracy that the Respondent and the other co-conspirators made and caused to be made false statements and representations in documents and forms which were sent and submitted by GCA Corporation to U.S. Customs Service in Boston, to influence action by the U.S. Customs Service and to effect the export of the semiconductor manufacturing equipment.

19. Respondent made and caused to be made, false statements to the Ministry of Economic Affairs, Belgium, in order to influence action by such Ministry of Economic Affairs and by the Office of Export Administration, U.S. Department of Commerce.

20. As part of the conspiracy the Respondent caused to be exported semiconductor manufacturing equipment to an intermediate consignee Pro Air A.G., a freight forwarder, in Zurich, Switzerland, for further transport by truck to Budapest, Hungary.

21. In 1982, the President of the United States was authorized by Congress to further United States foreign policy and to maintain national security by restricting and controlling the commercial export of goods which would make a significant contribution to the military potential of any other country or combination of countries, such goods being designated in the Commodity Control List, Title 15, Code of Federal Regulations ("CFR"), § 399.1, and by delegating the responsibility for administering the commercial export of the goods on the Commodity Control List to the Office of Export Administration in the Department of Commerce.

22. In 1982, the Office of Export Administration ("OEA"), International Trade Administration, U.S. Department of Commerce was an agency of the United States charged with the authority to issue validated export licenses for the export of certain commodities to controlled countries under the Export Administration Act of 1979 (50 U.S.C. App. 2401 *et seq.*), as extended by Act of Congress, Pub. L. 98-108 (October 1, 1983).

23. At that time a person desiring to export commodities contained on the Commodities Control List was required

to obtain a validated license issued by OEA before exporting the commodity from the United States, except where the export was authorized under a general license.

24. The Mann 4800 DSW (Direct Step on Wafer) system was a high technology system, with application to military uses, and was included on the Commodity Control List; the export of this commodity from the United States to a country other than Canada was not authorized under general license, and before any such export could be made, a validated license to the ultimate destination, (Budapest, Hungary) was required but was not obtained.

Based on the foregoing:

I find that the Respondent acting in conspiracy with others obtained U.S. semiconductor manufacturing system (a GCA Mann 4800) and a license to export same by falsely representing its destination and end users and did thereafter effect its diversion to Hungary without the required validated license to that country in violation of § 387.3 of the Regulations.

I further find that Respondent falsely represented he was purchasing a semiconductor manufacturing system on behalf of Stedelijke Industriële Hogeschool (I.H.A.M.) Antwerp, Belgium and falsely obtained and filed an import certificate from the Belgium government, representing that I.H.A.M. was the ultimate consignee, what he knew to be materially false, all in violation of § 387.5 of the Regulations.

I also find that Respondent in furtherance of the conspiracy, aided and abetted the violation whereby the semiconductor manufacturer system was reexported from Zurich, Switzerland to Budapest, Hungary, contrary to the terms of the export license and in violation of § 387.2 of the Regulations.

#### Conclusion

Though this Respondent asserts that he was not a party to the alleged diversion of the identified controlled equipment, to Hungary. The evidence demonstrates otherwise. His after the fact disclaimers are at odds with reality. The purchase of sophisticated semiconductor equipment of a value in excess of one-half million dollars was not a casual hardware store type purchase. The school had no such resources available and its pre-approval processes had not been utilized. Clearly the school never contemplated the purchase that was represented by Respondent. The use and verification of the school as the purchaser was a fraud perpetrated by Respondent. It was also the principal and first step in the

diversion. His failure, or more properly, his refusal, to communicate with the manufacturer for almost a year after delivery in Europe indicates continuing guilty knowledge and participation by him. The criminal conviction after a trial by jury of the co-conspirators Michael A. Kolleczeck and Airfo International, Inc., is also appropriately for consideration here, for the Respondent here was an indicated co-defendant and is a fugitive in that criminal conspiracy proceeding (USDC, District of Massachusetts Criminal #83-002249MC).

The bare representation that Respondent was acquitted by a Belgium court of charges based upon the same acts is of interest but is not relied upon because it is an unsupported representation. Like the conviction of the co-conspirators it would be appropriate to consider if there were some supporting records. In any event the result here is based on this record which compels the findings of misconduct as charged, by more than a preponderance of the evidence.

It is unfortunate that there has been extensive unexplained delay here, particularly from the May, 1984 criminal conviction to the April 1987 charging letter. In other cases I have railed against such unnecessary delay which I will not reiterate here. The Respondent has shown no prejudice from such continuations.

Respondents submissions showing of his background as a researcher, scientist, academician and military officer serve for naught in the face of what has been shown and admitted here. He is neither the first nor the last to sell himself and his reputation of a handful of silver. He must suffer the consequences of his own deception. In light of the fact that the GCA Mann 4800 System is controlled for reasons of national security and would not be licensed for export to Hungary, it is appropriate to impose a long term denial of Respondent's export privileges as a sanction for these violations.<sup>1</sup>

#### Order

I. For a period of 20 years from the date of the final Agency action, Respondent: Joseph P.M. d'Haens, Amerikalei 96, 2000 Antwerp, Belgium and all successors, assignees, officers, partners, representatives, agents, and

<sup>1</sup> Historically, the term "indefinite" which agency counsel requests meant until questions were answered on some conditions corrected. "Permanent" was the term used for those to be barred for all time. That latter term has caused problems in managing the list of denied parties. Twenty years should serve the interest of justice here.



employees hereby are denied all privileges of participating, directly or indirectly, in any manner of capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Participation prohibited in any such transaction either in the United States or aboard, shall include, but not be limited to, participation:

(i) As a party or as a representative of a party to a validated export license application;

(ii) In preparing or filing any export license application or reexport authorization or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such a denial of export privileges shall extend to matters which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services.

IV. All outstanding individual validated export licenses in which Respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondent(s)'s privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

V. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure and specific authorization from the Office of Export Licensing, shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly, or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any

association with any Respondent or any related person, or whereby any Respondent or related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill or lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any Respondent or related person denied export privileges, or

(b) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VI. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C.A. App 2412(c)(1)).

Dated: March 25, 1988.

Hugh J. Dolan,

Administrative Law Judge.

[FR Doc. 88-9572 Filed 4-29-88; 8:45 am]

BILLING CODE 3510-DT-M

#### [Case No. OEE-2-88]

#### Export Privileges; Samata S.A. et al.

In the matter of Mario Brero, individually with an address at: La Chenaletta, CH-1096 Treytorrens, Switzerland, and doing business as Samata S.A., 36 Rue de Montchoisy, CH-1207 Geneva, Switzerland, Marli S.A., 3 Chemin Taverney, CH-1218 Geneva, Switzerland, Graphic Data Products S.A., 3 Chemin Taverney, CH-1218 Geneva, Switzerland, Fincosid S.A., Galleria Benedettini, CH-6500 Bellinzona, Switzerland, Tourimex S.A., Via Bordemo, CH-6596 Gordola, Switzerland and Lilly Merchandising Co., Taborstrasse, Vienna, Austria, Respondents.

#### Order Temporarily Denying Export Privileges

The Office of Export Enforcement, Bureau of Export Administration,<sup>1</sup>

<sup>1</sup> On October 1, 1987, in accordance with the pertinent provisions of the Export Administration Act of 1979, as amended, and a Departmental directive from Bruce Smart, then-Acting Secretary of Commerce, implementing those provisions, the Office of Export Enforcement was moved within the Department from the International Trade Administration of the United States Department of Commerce to the Bureau of Export Administration

United States Department of Commerce (Department), pursuant to the provisions of § 388.19 of the Export Administration Regulations, 15 CFR Parts 368-399 (1987) (the Regulations), issued pursuant to the Export Administration Act of 1979, as amended, 50 U.S.C. app. 2401-2420 (1982 and Supp. III 1985) (the Act), has asked the Deputy Assistant Secretary for Export Enforcement, in his capacity as the individual who performs the duties of the Assistant Secretary for Export Enforcement, when, as is presently the case, that position is vacant,<sup>2</sup> to issue an order temporarily denying all United States export privileges to Mario Brero, individually and doing business as Samata S.A., and to Marli S.A., Graphic Data Products S.A., Fincosid S.A., Tourimex S.A. and Lilly Merchandising Co. (hereinafter collectively referred to as respondents).

The Department states that, as a result of an ongoing investigation, it has reason to believe that respondents are involved in a scheme to obtain controlled U.S.-origin commodities from the United States, take possession of them in Switzerland and then reexport them, oftentimes to proscribed destinations. The Department has reason to believe that, in carrying out their scheme, respondents have provided false and misleading statements of material fact concerning the intended end-users of U.S.-origin equipment respondents ordered from the United States. In fact, it appears that the Western European companies identified by respondents as being the intended end-users had no involvement in the transactions. Once the U.S.-origin goods were received by respondents in Switzerland, the Department has reason to believe that respondents reexported the goods to end-users in the Soviet bloc.

The U.S.-origin goods which respondents obtained from the United States are controlled for reasons of national security. The Department also states that its investigation has given it

of the United States Department of Commerce. The functions and scope of authority of the Bureau of Export Administration are set forth in Department Organization Order (DOO) 50-1, issued on March 23, 1988.

<sup>2</sup> The reorganization which created the Bureau of Export Administration also created the positions of Under Secretary for Export Administration and Assistant Secretary for Export Enforcement. See also DOO 10-16 (issued on March 10, 1988).

As a result, the Assistant Secretary for Export Enforcement is now the Department official who issues temporary denial orders. See DOO 50-1. At present, however, this position is vacant. Pursuant to DOO 50-1, the Deputy Assistant Secretary for Export Enforcement is the Department official who is to perform the duties of the Assistant Secretary when that position is vacant.